

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathaniel Flack	Team: Squad #5	CCRB Case #: 201707817	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/21/2017 2:30 AM	Location of Incident: § 87(2)(b)	Precinct: 46	18 Mo. SOL 11/21/2018	EO SOL 11/21/2018	
Date/Time CV Reported Mon, 09/25/2017 2:22 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/25/2017 2:22 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Ermir Aliaj	18857	959452	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Carlos Nunez	06098	958996	046 PCT
2. POM Edward Howe	18682	904175	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ermir Aliaj	Abuse: Police Officer Ermir Aliaj questioned § 87(2)(b)	§ 87(2)(b)
B.POM Ermir Aliaj	Abuse: Police Officer Ermir Aliaj searched § 87(2)(b)	§ 87(2)(b)
C.POM Ermir Aliaj	Force: Police Officer Ermir Aliaj used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on September 25, 2017.

On May 21, 2017, at approximately 2:30 am, § 87(2)(b) was walking to a friend's apartment at the corner of § 87(2)(b) in the Bronx, when he encountered PO Ermir Aliaj and PO Carlos Nunez of the 46th Precinct, who were assigned to a foot post nearby. § 87(2)(b) allegedly threw a plastic bottle at them. PO Aliaj allegedly asked § 87(2)(b) for identification (**Allegation A: Abuse of Authority – Question**, § 87(2)(g) placed him in handcuffs, and began to search him (**Allegation B: Abuse of Authority – Search of Person**, § 87(2)(g) before allegedly taking § 87(2)(b) to the ground (**Allegation C: Force – Physical Force**, § 87(2)(g) § 87(2)(b) was taken to § 87(2)(b) at his own request and left shortly after arrival without receiving any treatment. § 87(2)(b) received no summons or charges from this incident. Cell phone video footage for this case was obtained from § 87(2)(b) (Board Review 01).

Findings and Recommendations

Allegation A: Police Officer Ermir Aliaj questioned § 87(2)(b)

§ 87(2)(b) said in his interview (Board Review 02) that he was walking alone to a friend's apartment after consuming several cups of liquor at a music video shoot. § 87(2)(b) saw PO Aliaj and PO Nunez standing at the corner, and began to explain to the officers his view that police bore responsibility for recent shootings in the neighborhood. PO Aliaj told § 87(2)(b) twice to leave the area, which § 87(2)(b) refused to do. PO Aliaj asked for his identification. § 87(2)(b) did not have his identification and asked PO Aliaj why he needed it. § 87(2)(b)'s intake and phone statement (Board Review 03 and Board Review 17) were generally consistent.

PO Aliaj (Board Review 04) said that he was conversing with a pair of EMTs while standing in the street near their parked ambulance, containing an unconscious overdose patient, when he noticed § 87(2)(b) walking by and cursing loudly at the officers from the sidewalk, saying, "Fuck the police," and other things to that effect. PO Aliaj heard a "liquid object at his feet." PO Aliaj could not recall whether the EMTs were present when this occurred. PO Aliaj saw § 87(2)(b) looking towards him, the only civilian in the area, and concluded that he had thrown some sort of plastic container at him. PO Aliaj approached § 87(2)(b) and placed him handcuffs, being under arrest for disorderly conduct and reckless endangerment.

PO Nunez (Board Review 05) was generally consistent with PO Aliaj. He said that while speaking to the EMTs in the street, he saw § 87(2)(b) throw an empty gallon-sized plastic water bottle towards him and PO Aliaj. § 87(2)(b) threw the bottle overhand and it landed one or two feet from PO Aliaj. The EMTs were inside the ambulance tending to their patient when this occurred. PO Aliaj approached § 87(2)(b) to place him under arrest.

PO Howe (Board Review 14) was working on another job when PO Aliaj's encounter with § 87(2)(b) began, and he only heard after the incident that § 87(2)(b) had thrown a bottle.

The video footage, a summary of which may be found at Board Review 16, begins after § 87(2)(b) is in handcuffs. § 87(2)(b) is speaking to PO Aliaj as well as the person filming. At 56

seconds, PO Aliaj says something which is partly inaudible but concludes, "...problem throwing stuff, right?" PO Aliaj makes a throwing motion with his left hand. § 87(2)(b) replies, "I ain't never threw nothing at you." PO Aliaj's reply is interrupted by § 87(2)(b) telling bystanders to record. At 1:07, § 87(2)(b) says again, "I ain't never threw nothing at you." At 1:22, a voice off camera says, "My boy's not throwing nothing."

A Prehospital Care Report Summary from § 87(2)(b) (Board Review 06) states that § 87(2)(b) was apparently intoxicated and, "started cursing at the ER staff and left prior to triage." Positive notations were made for the odor of alcohol on § 87(2)(b)'s breath and person. The narrative also states that § 87(2)(b) was uncooperative and threw a bottle at officers, "as per PD."

No person shall litter, sweep, throw or cast, or direct any garbage or rubbish of any kind whatsoever, in or upon any street or public place. NY Admin Code, 16-118. (Board Review 07). An officer may ask a civilian to produce identification provided they have founded suspicion of criminality. People v. Perry, 102 A.D.3d 472 (Board Review 13).

§ 87(2)(g)
[REDACTED]

[REDACTED]

Allegation B: Police Officer Ermir Aliaj searched § 87(2)(b)

Allegation C: Police Officer Ermir Aliaj used physical force against § 87(2)(b)

§ 87(2)(g)
[REDACTED]

§ 87(2)(b) said that after PO Aliaj placed him in handcuffs, PO Aliaj began to search him by putting hands in his pants pockets, which § 87(2)(b) tried to prevent by blocking his pockets with his arms. PO Aliaj then "flipped," "slammed," or "scooped" § 87(2)(b) forward onto the ground so that he landed on his knees, possibly by holding onto his handcuffs or using an outstretched

leg. PO Aliaj searched § 87(2)(b)'s pockets once he was on the ground. § 87(2)(b) was taken to § 87(2)(b) at his own request, where he was told by staff that an officer had accused him of throwing a bottle at them. § 87(2)(b) denied doing this. § 87(2)(b)'s intake statement and phone statement were generally consistent.

PO Aliaj said that when he tried to place § 87(2)(b) in handcuffs, § 87(2)(b) resisted by moving his hands such that PO Aliaj could not get either handcuff on over a period of 10 seconds to a minute. Due to this resistance, PO Aliaj took § 87(2)(b) to the ground by holding § 87(2)(b)'s hand or forearm with one hand, while putting pressure on § 87(2)(b)'s shoulder or upper back with his other hand, causing § 87(2)(b) to fall front first to the ground. PO Aliaj patted § 87(2)(b) down but did not recall whether he searched him. § 87(2)(b) was taken to the hospital due to his apparent level of intoxication.

PO Nunez said that as the officers approached § 87(2)(b) he was continuing to curse, making “fidgeting” movements with his hands, and took a step in the officers’ direction from a distance of one to two feet away. When PO Alice took hold of his arm to place him in handcuffs, § 87(2)(b) stiffened his arm, and PO Aliaj “guided” § 87(2)(b) to the ground while holding onto his arm with one or both hands.

PO Howe said he could not recall whether he saw § 87(2)(b) searched or taken to the ground.

In the video footage, § 87(2)(b) is shown on ground while PO Aliaj picks up various items from the sidewalk and places them in § 87(2)(b)'s pockets.

An officer may search a person incident to arrest People v. Weintraub, 35 N.Y.2d 351 (Board Review 08). Where a person cannot be issued a summons due to a lack of identification, an officer may make an arrest and conduct a search incident to arrest. People v. Copeland, 39 N.Y.2d 986 (Board Review 10).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. Patrol Guide, 221-01 (Board Review 09).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g) [REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint against PO Aliaj in two years with the NYPD.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) rejected mediation, § 87(2)(b)
- No Notice of Claim was filed regarding this incident (Board Review 12).
- § 87(2)(b), § 87(2)(c)

Squad No.: _____

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____